issues as there was a pending and separate application to have the same judgment set aside for which the very same issues were pleaded and which would be more relevant in that application than in the appeal before me. To that end I had directed my mind solely on the issue as to whether I have the necessary jurisdiction to vary the judgment so as to reflect the correct and permissible rate of interest after judgment.

The judgment in default of appearance was entered against the first defendant on 31 January 1986 for the principal sum claimed together with interest at 13.5% pa on monthly rests from 31 October 1985 to date of realization and costs at $225. The rate of interest embodied in the judgment is the same as that pleaded in the statement of claim.

As at 31 January 1986, the only rate of interest allowed on a judgment sum was 8% pa under O 42 r 12. However, since 12 December 1986, O 42 r 12 has been amended to give jurisdiction to the courts to grant interest on judgment sums in excess of 8% pa where the parties have contractually agreed to such payment.

The plaintiff only became aware that the judgment carried the wrong rate of interest when the first defendant applied to have the judgment set aside and has raised as an issue the imposition of 13.5% interest pa as being compound interest contrary to s 11 of the Civil Law Act 1956. This had prompted the plaintiff to apply to have the judgment varied under O 20 r 11 and under the inherent jurisdiction of the court, so as to reflect the correct rate of interest, an application that was allowed by the senior assistant registrar on 2 February 1988.

Clearly the judgment has not complied with O 42 r 12 but the effect of such non-compliance does not render the judgment a nullity, as O 2 r 1 treats such failure to be an irregularity which can be remedied under r 2 of the same Order, by the court setting aside either wholly or in part the proceedings on which the failure occurred or amending or varying the judgment or order dealing with such failure. Thus the power to cure an irregular judgment is no longer confined to the slip rule under O 20 r 11, which is limited in its application as only clerical errors and slips can be corrected. The inclusion of 13.5% interest pa in the judgment can hardly be described as an error as the plaintiff had intended all along to claim that rate of interest after judgment as expressed in the statement of claim. However, by virtue of O 2 rr 1 and 2, the court is still empowered to cure such a judgment provided that the first defendant will not be in any way prejudiced by such an amendment.

The first defendant has already applied to have the same judgment set aside and the matter was pending when the appeal was heard. Since the amendment does not have the effect of preventing the first defendant from proceeding with its application, it cannot be said that the first defendant will be unduly prejudiced by the amendment. What the amendment seeks to do is to correct an otherwise regular judgment, a jurisdiction derived under O 2 r 1 and under the inherent jurisdiction of the court. On that finding, I had dismissed the first defendant's appeal with costs.

Order accordingly.

Solicitors: *Krishnan & Co*; *Rashid & Lee.*

Reported by *Ng Sheau Jiuan*

Yeap Chooi Peng v P Manogram a/l V Packirisamy

HIGH COURT (KUALA LUMPUR) – DIVORCE PETITION NO 47-165-87
SITI NORMA YAAKOB J
2 AUGUST 1988

Family Law – Divorce petition – Respondent's answer not filed on hearing dates – Decree nisi given in respondent's absence – Application to set aside decree nisi subsequently filed – Application only served on petitioner after decree had been made absolute – Whether respondent's tardy conduct justified setting aside decree absolute

The petitioner filed a divorce petition and the petition was set down for hearing on 16 July 1987. On that date the respondent asked for time to file an answer and the hearing was adjourned to 23 July 1987. At the second hearing on 23 July 1987, the respondent still had not filed any answers and the hearing was adjourned again to 13 August 1987. At the third hearing on 13 August 1987, only the petitioner and her counsel were present. In the respondent's absence, the court granted the decree nisi. The respondent then filed an application on 28 August 1987 to have the decree nisi set aside and that the petition be reheard afresh. However, the application was only served on the petitioner's solicitors three months later on 23 November 1987, by which time the decree had already been made absolute.

Held, dismissing the application: Although the respondent's solicitors acted fast enough to file the application, they, however, dragged their feet in serving the application on the petitioner's solicitors. Since the decree nisi has already been made absolute and for all intents and purposes the parties are already divorced, the respondent has to give good and valid reasons why he had failed to file an answer. The respondent's tardy conduct does not justify the court setting aside the decree absolute that had been regularly obtained.

G Davidason for the respondent/applicant.
Balwant Singh Sidhu for the petitioner/respondent.

Cur Adv Vult

Siti Norma Yaakob J: The parties to this petition were married on 26 July 1977 and three children were born

from this union. On 7 October 1986, the parties separated following acts of cruelty alleged by the petitioner and on 17 March 1987, she filed this petition seeking to end the marriage and that the three children continue to reside with the respondent's sister and that custody be granted to the respondent with reasonable access to her. She also asked that the respondent provide maintenance for her and the children of the marriage.

The petition was set down for hearing on 16 July 1987 and on that date all parties were present with their respective counsel. Mr Karam Singh who represented the respondent asked for time to file an answer and I adjourned the hearing to 23 July 1987 to enable the respondent to do so.

At the second hearing on 23 July 1987, both parties were again present, the petitioner with her counsel and the respondent with another counsel from the Legal Aid Bureau as Mr Karam Singh had discharged himself. As the respondent had not filed any answer I adjourned the hearing to 13 August 1987 to enable the respondent to do so.

At the third hearing on 13 August 1987, only the petitioner and her counsel were present. There was no sign of the respondent or his counsel and neither had he filed an answer. In his absence I had granted all the prayers asked for by the petitioner, except the prayer for maintenance and I also ordered that the decree nisi be made absolute at the end of one month.

The proceedings that followed next was the filing of the instant application by the respondent to have the decree nisi set aside and the petition reheard afresh.

The respondent's application was filed on 28 August 1987, 15 days after the decree nisi was pronounced but the application was only served on the petitioner's solicitors three months later on 23 November 1987, by which time the decree had already been made absolute. The certificate making the decree nisi absolute although filed and dated 17 September 1987 was in fact signed by the senior assistant registrar on 6 October 1987. Even at that date, the application to set aside had not been served on the petitioner's solicitors and the respondent, who is represented by solicitors, must give a good reason why it took his solicitors three months to serve the application on the petitioner's solicitors.

From his own affidavit in support of his application, the respondent has averred that his solicitors were aware on the afternoon of 13 August 1987 that the decree nisi had already been pronounced the same morning in his absence. Although his solicitors acted fast enough to file the application, they, however, dragged their feet in serving the application on the petitioner's solicitors. Since the decree nisi has already been made absolute and for all intents and purposes the parties are already divorced, the respondent has to give good reasons why he had failed to file an answer.

As can be seen from the proceedings, every opportunity was given to him to file an answer. To begin with, the petition was served on him personally on 24 April 1987 and from that date until his last appearance in court on 23 July 1987, he was never denied his right to file an answer. What is more he never bothered to exercise his right to file his answer when the petition was before the court on 13 August 1987. If indeed his counsel had noted the wrong date of hearing in the file which accounted for the respondent's absence in court on 13 August 1987, this should not have prevented him or his solicitors from filing his answer. Since he did not do so, and he has not given any acceptable explanation for his tardiness, I had considered that his conduct does not justify my setting aside the decree absolute that had been regularly obtained. For him to succeed on his application, the respondent must show good and valid reasons why the decree absolute should be set aside. Since he had failed to do so, I had accordingly dismissed his application with costs.

Order accordingly.

Solicitors: *Syarikat Davidason*; *Balwant Singh Sidhu & Co.*

Reported by *Ng Sheau Jiuan*

Development & Commercial Bank Bhd v Syarikat Farmco Sdn Bhd & Ors

HIGH COURT (KUANTAN) – CIVIL SUIT NO 638 OF 1985
LAMIN J
30 JULY 1988

Banking – Guarantee for overdraft facilities executed after grant of overdraft – Whether consideration was past – Whether guarantee was a continuing guarantee or invalid guarantee

Contract – Guarantee – Guarantee for overdraft facilities executed after grant of overdraft – Whether consideration was past – Whether guarantee was a continuing guarantee or invalid guarantee

The first defendant company had been operating an account with the plaintiff bank for overdraft facilities since 1980. A guarantee was executed by the second, third and fourth defendants (who were directors of the first defendant company) jointly and severally on 31 July 1981. Subsequently, the plaintiff bank filed a claim against the defendants for a sum of moneys due and owing by the first defendant under the account. The senior assistant registrar granted the plaintiff's application under O 14 of the Rules of the High Court 1980. The defendants appealed against the decision of the senior assistant registrar, arguing that there was delay on the part of